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INSURANCE REGULATION
Docketed by: AD

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 297086-22

Petition to Amend and Extend Variance from
Rule 690-125.003, by Transamerica Life
Insurance Company

ORDER APPROVING EXTENSION OF VARIANCE

THIS CAUSE came on for consideration upon Transamerica Life Insurance Company (“Transamerica”), formerly known as Transamerica Premier Life Insurance Company, and previous to this as Monumental Life Insurance Company, filing a Petition for variance from Rule 690-125.003, F.A.C. (the “Petition”), with the Florida Office of Insurance Regulation (“Office”), pursuant to Section 120.542, Florida Statutes. After a complete review of the entire record, and upon consideration thereof and being otherwise fully advised in the premises, the Office finds as follows:

1. The Office has jurisdiction over Transamerica and the subject matter of this proceeding.
2. Transamerica is a foreign life and health insurer authorized to transact insurance business in the state of Florida pursuant to a Certificate of Authority issued by the Office in accordance with Chapter 624, Part III, Florida Statutes.

3. Pursuant to Section 626.9521(1), Florida Statutes, no person in this state shall engage in any trade practice that is determined to be an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance.

4. Section 626.9541(1)(dd), Florida Statutes, states that the following is an unfair method of competition or unfair or deceptive act:

Life insurance limitations based on past foreign travel experiences or future foreign travel plans.--

1. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.

2. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate and the Office of Insurance Regulation determines that:

a. Individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel; and

b. Such risk classification is based upon sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

5. Section 626.9611, Florida Statutes, establishes that the Financial Services Commission ("Commission") may adopt reasonable rules to identify specific methods of competition or acts or practices that are prohibited by Section 626.9541, Florida Statutes.

6. Section 626.9541(1)(dd)3., Florida Statutes, provides that the Commission may adopt rules pursuant to Sections 120.536(1) and 120.54, Florida Statutes, which are necessary to implement Section 626.9541(1)(dd), Florida Statutes. It further provides that the Commission may provide for limited exceptions to the prohibition set forth where such exceptions are "based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy."

7. Rule 69O-125.003, Florida Administrative Code (“Rule”), implements Sections 626.9541 and 626.9611, Florida Statutes, by prohibiting unreasonable discrimination based upon travel plans and sets forth an actuarial process by which an insurer wishing to make underwriting decisions based upon travel plans may do so. This Rule also provides a process by which an insurer may file a petition for a variance or waiver with the Office for a limited exception from the Rule.

8. The Rule reads in pertinent part:

69O-125.003 Unfair Discrimination Because of Travel Plans.

(1) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue or refuse to continue any policy, contract or certificate of insurance of any individual, or limit the amount, extent or kind of insurance coverage offered to an individual, an accident, disability or health insurance policy or certificate, because of the intent of the applicant to engage in future lawful foreign travel or based upon past lawful foreign travel, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(2) No insurer nor person authorized to engage in the business of insurance in the State of Florida, shall, in determining the rates charged an applicant for coverage under any policy, contract or certificate of life insurance, annuity contract, accident, disability or health insurance, issued or to be issued to be delivered to any resident of this state, consider the intent of the applicant to engage in future lawful foreign travel or past lawful travel of the applicant, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(3) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance to or refuse to continue any policy, contract or certificate of life insurance of any individual or limit the amount, extent or kind of life insurance coverage offered to an individual based solely on the individual’s past lawful foreign travel.

(4) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance to or refuse to continue any policy, contract or certificate of life insurance of an individual, or limit the amount, extent or kind of life insurance coverage offered an individual based solely on the individual’s

future lawful foreign travel plans unless the insurer can demonstrate that individuals who travel are a separate actuarially supportable class whose mortality risk is different from that of individuals who do not travel, and that such risk classification is based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

(5) An insurer shall file for approval information demonstrating that individuals who travel to a specific destination constitute a separate actuarially supportable class. The insurer shall not utilize such information within any underwriting decision resulting in a refusal to issue, refusal to continue, limitation on amount, extent or kind of life insurance coverage available to an individual until the Office has first approved the filing and determined that the insurer has demonstrated that the underwriting proposed meets compliance with the standards of Section 626.9541(1)(dd), F.S. Nothing in this rule prevents an insurer from asking questions about foreign travel on an application in order to compile information provided such information is not used in any underwriting decision unless the insurer has received prior approval from the Office.

(6) In determining individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination, insurers shall:

(a) Have performed a detailed actuarial analysis detailing the specific impact of the proposed risk;

(b) Demonstrate that all similar risks with similar risk exposure are similarly treated and that the risk is outside of the underwriting parameters that the insurer is accepting for its maximum rated risks;

(c) Use statistically credible data that is specific and relevant to the analysis and risk being evaluated, that is, using a country population death rate is not relevant to the analysis of the risk of short-term travel. In the absence of actual experience, an actuary may submit for the Office's consideration clear actuarial evidence, including clinical experience or expert opinion relied upon by the actuary that demonstrates to the Office that differences in risk are related to the travel;

(d) Disclose the range of underwriting and rating options and how each is supported by the analysis;

(e) Maintain a report prepared by the actuary providing the information used and relied upon by the actuary in preparing his conclusions, including but not limited to: summarizing the source, basis and relevancy of data used, the impact of the risk on expected loss, the range of expected loss within the underwriting class and how the proposed travel risk falls inside or outside of such underwriting range, the analysis performed and the basis of any conclusions reached. Such report shall disclose how compliance with all appropriate actuarial standards of practice is met and specifically detail any standards that are not.

(7) In accordance with Section 626.9541(1)(dd)3., F.S., an insurer may file a petition for a variance or waiver with the Office for a limited exception from the statute and this rule. The petition shall contain supporting information demonstrating that the requested limited exception(s) are based upon national or international emergency conditions that affect the public health, safety, and welfare and are consistent with public policy.

* * *

(9)(a) Violation of this rule constitutes unfair discrimination prohibited by Sections 626.9541(1)(g) and (dd), F.S.

8. In general, if an insurer wishes to factor future lawful foreign travel plans into its underwriting for accident, health, or life insurance, it must present to the Office evidence demonstrating that individuals who travel to those countries constitute a separate actuarially supportable class. However, Rule 690-125.003(7), Florida Administrative Code, provides that an insurer may file a petition for variance from Section 626.9541(1)(dd), Florida Statutes, and the Rule, to allow for a variance from the Rule as it applies to travel to a specific country.

9. In late 2007, Transamerica filed a petition for variance from the Rule, in which it requested the ability to factor future lawful travel to Iraq and Afghanistan into its underwriting of policies for applicants and asserted that it met the statutory requirements for the granting of such a variance, as set out in Section 120.542, Florida Statutes.

10. On February 15, 2008, the Office issued an order granting the variance from the Rule to allow Transamerica to consider future lawful travel to Iraq and Afghanistan in its underwriting decisions, but limited the term of the variance for two years, unless otherwise extended.

11. On December 17, 2009, the Office issued an order extending the term of the variance from the Rule as applied to travel to Iraq and Afghanistan until February 15, 2012.

12. In late 2011, Transamerica filed a petition requesting that the Office extend the variance from the Rule as applied to future lawful travel to Iraq and Afghanistan. The Office

issued a corresponding order granting that request on January 28, 2012, and extending the term of the variance from the Rule as applied to travel to Iraq and Afghanistan until February 15, 2014.

13. In late 2013, Transamerica filed a petition requesting that the Office extend the variance from the Rule as applied to travel to Iraq and Afghanistan. The Office issued a corresponding order granting that request on February 15, 2014, and extending the term of the variance from the Rule as applied to travel to Iraq and Afghanistan until February 15, 2016 (“2014 Order”).

14. On February 15, 2016, the Office amended the 2014 Order to extend the variance until June 15, 2016.

15. On May 17, 2016, Transamerica filed a petition requesting that the Office extend the variance from the Rule as applied to future lawful travel to Iraq and Afghanistan. Transamerica also requested, for the first time, that a variance from the Rule be granted as to future lawful travel to Syria, Libya, North Korea, Nigeria, Mali, South Sudan, Yemen, Ukraine, and Somalia. The Office issued an order granting an extension of the variance from the Rule as to future lawful travel to Iraq and Afghanistan until June 15, 2018, and denying the petition with regard to the remaining countries that were part of Transamerica’s request.

16. On May 8, 2018, Transamerica filed a petition requesting that the Office extend the variance from the Rule as applied to future lawful travel to Iraq and Afghanistan. The Office issued a corresponding order granting the request on June 15, 2018, and extending the term of the variance from the Rule as applied to travel to Iraq and Afghanistan until June 15, 2020.

17. On July 13, 2020, Transamerica filed a petition requesting that the Office grant a variance from the Rule as applied to future lawful travel to Iraq and Afghanistan (“2020 Petition”). In the 2020 Petition, Transamerica asserted that travel conditions in Iraq and Afghanistan had not

changed and the travel to those countries remained dangerous and associated with an increased risk of death or serious injury. The Office issued a corresponding order granting the request on October 12, 2020, and extending the term of the variance from the Rule as applied to travel to Iraq and Afghanistan until June 15, 2022.

18. On June 15, 2022, Transamerica filed a petition requesting the Office grant a variance from the Rule as applied to future lawful travel to Iraq and Afghanistan. In the Petition, Transamerica asserted that conditions in Iraq and Afghanistan remain unstable and dangerous, and associated with an increased risk of death or serious injury. Transamerica requested that the Office grant a variance with respect to the anticipated future travel of an insurance applicant to Iraq or Afghanistan, for a period of two (2) years, or such maximum time as the Office would grant.

19. Transamerica's assertion with respect to Iraq and Afghanistan is correct. Because of the extreme conditions in Iraq and Afghanistan and the corresponding danger to travelers who visit those countries, allowing insurers to factor in their underwriting of insurance for applicants' future travel plans to Iraq and Afghanistan would not result in unfair discrimination.

20. Although Transamerica filed this request as a new petition for variance rather than an extension, the Office, using its broad agency discretion, is treating the request as a tardy request for extension of the existing variance.

21. Section 120.542(2), Florida Statutes, sets forth a two-pronged test for the granting of a variance. The first prong requires that the entity subject to the rule show the purpose of the statute in question will be or has been achieved by other means. Because Transamerica has established that consideration of future lawful travel to Iraq and Afghanistan remains relevant to its underwriting and does not result in unfair discrimination, this prong has been met.

22. The second prong necessary for the granting of a variance as set out in Section 120.542(2), Florida Statutes, is that application of the rule would either create a substantial hardship or would violate principles of fairness. Pursuant to Section 120.542, Florida Statutes, “Principles of fairness” are violated “when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.” Transamerica does not contend the Rule impacts it in a manner different from how it impacts other similarly situated insurers. Therefore, Transamerica must satisfy the second prong by establishing that the application of the Rule would create a substantial hardship.

23. According to Section 120.542(2), Florida Statutes, “substantial hardship” means a “demonstrated economic, technological, legal or other type of hardship” to the entity requesting the variance. Given the facts Transamerica has presented, any person traveling to Iraq or Afghanistan has an increased risk of death or serious injury. This increased risk is a factor which can be appropriately considered when Transamerica underwrites an insurance policy and is the type of risk that the Rule contemplates. Therefore, the second prong under Section 120.542(2), Florida Statutes, has been met.

24. As both prongs for the granting of a variance under Section 120.542(2), Florida Statutes, remain met, the request for the extension of the variance from the Rule shall be granted.

25. Pursuant to Section 120.542(1), Florida Statutes, an agency may limit the duration of a waiver. A two-year limit on the extension of this waiver remains appropriate, subject to extension by the Office or to a petition by Transamerica to extend it again, if necessary.

ACCORDINGLY, the Office of Insurance Regulation extends the waiver from Rule 690-125.003, Florida Administrative Code, as it relates to travel to Iraq and Afghanistan. Insurers may

factor travel plans of applicants to Iraq and Afghanistan in their underwriting of all forms of insurance designated in Rule 690-125.003, Florida Administrative Code. The term of the variance is extended two years, from June 15, 2022, until June 15, 2024. The variance will expire on June 15, 2024, unless otherwise extended by order.

DONE AND ORDERED this 8th day of September, 2022.



David Altmaier

David Altmaier, Commissioner
Office of Insurance Regulation

NOTICE OF ADMINISTRATIVE RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, Florida Administrative Code, you have the right to request a hearing to contest this action by the Office of Insurance Regulation (Office). Your request for a hearing must be in writing and directed to:

Agency Clerk
Office of Insurance Regulation
647 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0300

The request must be transmitted by U.S. Mail or private express mail service, or hand-delivered. Requests transmitted by facsimile transmission or electronic mail will not be accepted for filing. Your request for a hearing must be received by the Office at the above address not later than twenty-one (21) days from the date on which you receive this notice. Any document received by the Office before 5:00 p.m. shall be filed as of that day but any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. If you do not timely file a request, your right to a hearing shall be deemed waived and the Office's agency action will be final.

If you desire to challenge this agency action and do not dispute the material facts as found by the Office, you may request a hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes. A request for hearing not involving disputed issues of material fact must comply with the content requirements of Section 120.569(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

If you desire to challenge this agency action and dispute the material facts as found by the Office, you may request a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes. A request for hearing involving disputed issues of material fact must comply with the content requirements of Section 120.569(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

A request that is not in substantial compliance with the applicable rules and statutes will be dismissed.

Any request for a hearing received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation under section 120.573, Florida Statutes, is not available for this agency action.

COPIES FURNISHED TO:

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